

Appn. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

REMARKS

Reconsideration is respectfully requested.

Entry of the above amendments is courteously requested in order to place all claims in this application in allowable condition and/or to place the non-allowed claims in better condition for consideration on appeal.

Claims 1 through 18 and 31 through 37 remain in this application. Claims 19 through 30 have been cancelled. No claims have been withdrawn. No claims have been added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraphs 8 and 9 of the Office Action

Claims 33 and 34 have been rejected under 35 U.S.C. §112 (first paragraph) as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention.

Claim 33 states:

33. (Previously presented) The method as described in claim 1, wherein the device is a disk drive.

It is alleged in the Office Action that (emphasis in original):

The claim [33] defines the device in claim 1 is a disk drive which was not disclosed in the specification. Rather, the specification discloses that the device includes a hard disk drive, that is not the disk drive itself (see for example, p.6, lines 30, 'For example, in one embodiment the device includes a hard disk drive...'. For the purpose of compact prosecution, the Examiner treats the device including a disk drive.

However, the concluding statement that "the Examiner treats the device *including a disk drive*" does not appear to be inconsistent with the language of claim 33, as the language of claim 33 requires that "the device is a disk drive". Thus, it is not understood how the interpretation set forth in the

Appn. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

concluding sentence is any different from the literal language of the claim. In other words, claim 33 requires "the device is a disk drive", and the rejection contains the interpretation that "the device include[es] a disk drive". However, to resolve any perceived distinction between the language of the claim and the interpretation, the language of claim 33 has been amended to recite "the device *includes* a disk drive" (emphasis added).

Withdrawal of the §112 (first paragraph) rejection of claims 33 and 34 is respectfully requested.

Paragraph 10 through 14 of the Office Action

Claims 1, 3 through 6 and 31 through 35 have been rejected under 35 U.S.C. §102(e) as being anticipated by Wang.

Claims 7, 9 through 12, 13 and 15 through 18 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Wang.

Claims 2, 8, 14, 36 and 37 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Wang in view of Stevens.

It is stated in the "Response to Arguments" portion of the final Office Action that:

At page 9, third paragraph, the applicant argues that Wang does not disclose the requirements of claims 2, 8 and 14 about detail steps for determining the operating system type by comparing at least one of the data, time and number of bytes of a common file of the operating system. However, the Examiner respectfully disagrees. As to previous Office action, page 9, the Examiner rejected the claims 2, 8 and 14 based on the prior art of Wang and Stevens. Wang does not explicitly discloses the detail steps about now to determine the operating system type, but Stevens does disclose this feature of determining the operating system type by reading and parsing set of specific file. Therefore, Wang and Stevens together do disclose the feature of claims 2, 8 and 14.

However, nothing in the previous response by the applicant asserted that Wang does not disclose this requirement of claims 2, 8, and 14—the

Appln. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

rejection (as well as the statement in the Response to Arguments above) concedes that Wang does not disclose this requirement. The previous response of the applicant pointed out that the Stevens patent *also* does not disclose the specific requirements of claims 2, 8, and 14. The Response to Arguments alleges that the Stevens patent "disclose[s] this feature of determining the operating system type by reading and parsing set of specific file". Nevertheless, the language of claims 2, 8, and 14 do not merely require "determining the operating system type" by any manner, but by the specific manner of "*comparing at least one of the date, time and number of bytes of a common file of the operating system*". This more detailed language of claims 2, 8 and 14 was not mentioned in either the "Response to Arguments" or the rejection of the final Office Action.

Specifically, the rejection points to Figure 6B and col. 14, lines 15 through 20, which state:

If the file system is supported or known, the process 220 proceeds to process block 345, where it reads the file system's directory structure and parses through the known subdirectories. The process 220 then determines the operating system by reading a set of specific files and parses the content of the files.

However, the discussion here is very general, and does not disclose "comparing at least one of the date, time and number of bytes of a common file of the operating system" as required by claims 2, 8, and 14. More particularly, nothing in the general statements in the portion of the Stevens patent relied upon in the rejection discloses either discloses or suggests that the Stevens system does any comparison, especially a comparison of the "date... of a common file", the "time... of a common file", or the "number of bytes... of a common file". Merely "parsing through the known subdirectories" or even "pars[ing] the content of the files" as stated in Stevens does not disclose to one of ordinary skill in the art that any of these specific requirements are implemented in the Stevens system. It is submitted that the general statement of "parsing the content of the files"

Appln. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

does not anticipate the specific step of "comparing" the "date... of a common file", the "time... of a common file", or the "number of bytes... of a common file" as required by claims 2, 8 or 14.

For the purposes of a compact prosecution, and to enhance the undersigned's understanding of the position of the Examiner with regard to this matter, if this rejection is maintained, it is respectfully requested that the Examiner explain how one of ordinary skill in the art, considering the general statements in Stevens regarding "parsing" subdirectories and files would understand that this discloses comparing date, time, or number of bytes information of a common file.

Claim 37 requires that "the data recorder comprises a memory with diagnostic information for the device stored thereon". It is acknowledged that the Wang patent "does not explicitly disclose it contains diagnostic information", but then it is alleged in the rejection of the final Office Action that:

However, it is well known in the computer art that the data recorder/memory can be used to store any computer readable information including diagnostic information for the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to save the diagnostic information in the data recorder/memory that user can retrieve/loop-up/analyze those information for diagnose/debug purpose.

However, simply because a memory "*can be used* to store any computer readable information including diagnostic information" (emphasis added) does not necessarily lead one of ordinary skill in the art to make this allegedly obvious modification. It is alleged that it would have been obvious to "save *the* diagnostic information in the data recorder/memory" (emphasis added), but the rejection has not shown that the Wang system has diagnostic information to save, much less diagnostic information "for the device".

Appn. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

As previously noted, claim 1 requires "saving the operating system type in a data recorder". Claim 7 includes a similar but not identical requirement. Claim 13 requires "wherein the program of instructions configures the information handling system to determine an operating system type, save the operating system type to the data recorder, and load a firmware module based on the saved type".

In the rejection of the Office Action, it is asserted that the claim requirement is disclosed by the Wang patent at, for example, col. 5, lines 51 through 54. As noted in the rejection of the Office Action, the Wang patent states at col. 5, lines 51 through 54 that:

At this point, the JNI implementation can display to the user the detected local system characteristics, as will be discussed with reference to FIGS. 6B and 6C below.

However, nothing here states or suggests that the type of operating system is saved, or that the type is saved in a data recorder. Looking to Figures 6B and 6C, nothing in these figures, which show two screens displayed by the Wang system, shows a type of operating system, or suggests that the type of operating system has been saved. It is noted that the text of the Wang patent merely discusses the detection of the type of operating system for the purpose of "selecting a JNI implementation that is appropriate for that type of OS." In greater detail, col. 5, lines 41 through 51 states:

While running, the Java program detects the type of operating system (OS) of the local computer system in operation 412. Once the type of OS is detected in operation 412, operation 414 proceeds with the Java program selecting a JNI implementation that is appropriate for that type of OS. In operation 416, the JNI implementation runs on the local computer system, and in operation 418, detects local system characteristics such as the operating system type, the local hardware device type, the current firmware version and bug fixes, and the local system CPU type.

Nothing here suggest that once the operating system type is detected, and the appropriate JNI implementation is selected, that there is any saving of the operating system type, particularly in a data recorded.

Appn. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

Further, with respect to Figures 6B and 6C, the Wang patent states at col. 6, line 56 through col. 7, line 23:

After the firmware update is initiated, a screen 604 such as that depicted in FIG. 6B, can be displayed. In screen 604, the local hardware devices which were detected, along with the current firmware version for that local hardware device, is displayed. From screen 604, the local hardware device that the user desires to update can be highlighted and then selected through the user's selection of the area of the screen indicated as a select button 606. FIG. 6C depicts a screen 610 that is displayed after the user selects the desired local hardware device. In screen 610, the device identifier along with the firmware version and any bug fix identifier is displayed. Also displayed are areas of the screen 610 which are identified for various operations that are available to the user. For example, a save button 612 is available for saving the current version of the firmware to a file in the memory of the local computer system. Also a flash button 614 is provided whose selection by the user causes loading of the update file to the RAM of the local computer system, the erasing of the local hardware device ROM, the writing of the update file from the RAM to the ROM, and comparison of the now-updated ROM to the update file on the RAM so as to verify that the update has been properly completed. In addition, other operations can be made available to the user by identifying portions of the screen that can be selected by the user.

Nothing here suggests that any operating system type is saved in a data recorder. It is submitted that one of ordinary skill in the art would not understand that the Wang patent teaches that the operating system type is saved in a data recorder.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Wang and Stevens set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 2, 7, 13, 36 and 37. Further, claims 8 and 9, which depend from claim 7, claim 10, which depends from claim 9, claims 11 and 12, which depend from claim 10, claims 14 and 15, which depend from claim 13, claim 16, which depends from claim 15 and claim 17 and 18, which depend from claim 16 also include the requirements

Appn. No. 10/720,782
Amendment dated December 31, 2007
Reply to Office Action mailed October 30, 2007

discussed above and therefore are also submitted to be in condition for allowance.

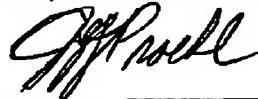
Withdrawal of the §102(b) and §103(a) rejections of claims 1 through 18 and 31 through 37 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

WOODS, FULLER, SHULTZ & SMITH P.C.



Jeffrey A. Proehl (Reg. No. 35,987)
Customer No. 40,158
P.O. Box 5027
Sioux Falls, SD 57117-5027
(605)336-3890 FAX (605)339-3357

Date: Dec. 31, 2007